

COMMONWEALTH OF PENNSYLVANIA



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OFFICE OF CONSUMER ADVOCATE
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September 12, 1997

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Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

Via Federal Express

Re: Implementation of the Subscriber Carrier
Selection changes Provisions of the
Telecommunications Act of 1996

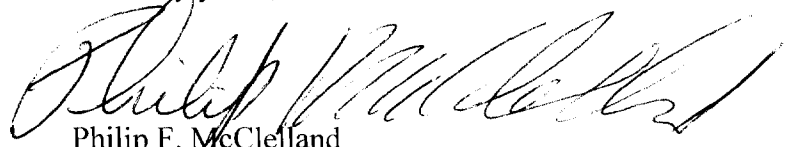
Policies and Rules Concerning Unauthorized
Changes of Consumers' Long Distance
Carriers
CC Docket No. 94-129

Dear Secretary:

Enclosed please find an original and eleven copies of the Comments of the Pennsylvania Office of Consumer Advocate for filing with the Commission in the above-referenced matter.

Please indicate your receipt of this filing on the additional copy provided and return to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you. As evidenced by the attached Certificate of Service, all parties to this proceeding have been duly served.

Sincerely yours,


Philip F. McClelland
Assistant Consumer Advocate

Enclosure
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UNITED STATES OF AMERICA DOCKET FILE COPY ORIGINAL
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

Implementation of the Subscriber Carrier :
Selection Changes Provisions of the : CC Docket No. 94-129
Telecommunications Act of 1996 :

Policies and Rules Concerning :
Unauthorized Changes of Consumers' :
Long Distance Carriers :

COMMENTS OF THE
PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE

Philip F. McClelland
Assistant Consumer Advocate

For:
Irwin A. Popowsky
Consumer Advocate

Office of Attorney General
Office of Consumer Advocate
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DATED: September 15, 1997

I. SUMMARY

The Pennsylvania Office of Consumer Advocate (PaOCA) addresses the FCC's proposed slamming regulations in these Comments. Slamming continues to be a significant problem for consumers. Given that a greater number of services should be subject to competition, the same slamming verification requirements should apply to all carriers. The FCC should also make certain that the same individuals or unit within the LEC should not verify consumer choices for Preferred Carrier selection, and also seek to persuade that consumer that the LEC should be the Preferred Carrier.

The FCC should eliminate the negative option aspect of the Welcome Package as this provision will not always reflect the consumer's intent. The FCC should also apply the same verification procedures to a Preferred Carrier Freeze, as it applies to the decision to switch carriers.

The FCC should not obligate consumers to make payment to those carriers that have provided services only as a result of slamming. The FCC should further recognize that state commissions will be active in enforcing verification requirements and the state authority to apply additional slamming penalties should also be recognized.

II. INTRODUCTION

On July 15, 1997, the Federal Communications Commission (FCC) issued a public notice and request for comments (NPRM) concerning unauthorized change of a consumer's Primary Carrier (PC) in conformance with the restrictions included in the Telecommunications Act of 1996 (Act). The Pennsylvania Office of Consumer Advocate addresses these issues raised in the NPRM in these Comments.

III. INTEREST OF PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE

The PaOCA is an office created by the Pennsylvania General Assembly to represent the interests of consumers before state and federal agencies and courts which regulate the activities of Pennsylvania public utilities. 71 Pa. Stat. Ann. § 309-4(a). As the Commission is now proposing to revise its slamming rules for telecommunications carriers in compliance with the Act, these rules will obviously affect consumers in Pennsylvania and their carriers.

IV. PRESENTATION OF COMMENTS

A. Slamming Continues To Be A Significant Problem For Consumers.

The PaOCA supports the FCC's efforts to strengthen its slamming regulations. Slamming continues to be a significant problem for Pennsylvania consumers. The OCA continues to receive many complaints concerning this practice.

Consumers have often become extremely frustrated in trying to resolve these complaints. Many Pennsylvania consumers now also have the opportunity to presubscribe to their preferred intraLATA carrier as well. While there is now little, if any, opportunity for residential consumers to switch carriers for local service, we hope that this opportunity will soon be presented as well.

These competitive opportunities should be welcomed by consumers. However, the benefits of competition have often been overshadowed by the prevalent practice of slamming - notwithstanding the slamming penalties that have been in effect. Having assisted many consumers who have been the victims of this practice, it seems clear that consumers do not look forward to shopping for the best telecommunications service, but instead often avoid any discussion with telecommunications service providers given the risk that even the most casual discussion will lead to the unintended transfer of their service to another carrier. With this background in mind the OCA welcomes the opportunity to further strengthen the penalties for slamming.

B. Verification Procedures Should Apply To All Carriers

The OCA supports the FCC's proposal that its slamming rules should apply to all carriers. The current slamming rules now only apply to IXC's. Universal application to both

IXCs and LECs is especially appropriate given that IXCs and LECs are now - or soon will be - competing to provide many of the same services to consumers. In Pennsylvania prior to 1997, consumers could use IXCs to carry their intraLATA toll calls only by using a 10xxx access code. However, in 1997 the local exchange customers of Bell Atlantic-Pennsylvania, Inc. ("BA-PA") and others now have the opportunity to presubscribe to an IXC for intraLATA toll traffic. Under the terms of the Telecommunications Act of 1996, the local exchange market should become subject to consumer choice as well. Thus, BA-PA and the IXCs have already begun to compete for intraLATA presubscriptions. It is appropriate and consistent for the interLATA, intraLATA and local exchange markets to be controlled by the same presubscription verification rules and that these rules should apply to all carriers that offer these services.

C. LEC Role As Verification Judge and Commercial Advocate.

PaOCA also recognizes the inherent conflict that will occur whenever a LEC is called upon both to execute a change in the Preferred Courier ("PC") of a customer and seek to persuade the subscriber that the same LEC should be the PC. NPRM at ¶15. This conflict of interest appears to be irreconcilable. Such conflict is further exacerbated by the fact that the LECs - and their employees - will likely become even more focused upon persuading their customers to purchase the LEC's services as we enter into a more competitive environment. The PaOCA is concerned that in many instances the LEC personnel involved in these activities may also receive compensation dependent upon their sales accomplishments as well. Consumers are also likely to find it disconcerting if the same LEC personnel that attempt to verify their PC choices also advocate that the LEC should achieve that PC status.

Allowing the LEC and its employees to act as both judge and commercial

advocate presents grave problems. The OCA suggests that potential solutions would at least include either segregating PC verification functions within the LEC or establishing an entirely separate and non affiliated organization. The FCC may adopt either option in order to make certain that the verification function should be segregated from any marketing function. In any event, the FCC should not permit the same individuals or unit to perform both the verification and service marketing functions. Such a result would sacrifice the integrity of the verification function by the LEC and should not be permitted.

D. The FCC Should Eliminate the Negative Option Aspect of the Welcome Package.

PaOCA fully supports the proposal of the National Association of Attorneys General (NAAG) that there should be no negative option condition attached to the Welcome Package. The FCC has explained that pursuant to the FCC's regulations at § 64.1100(d)(8) the switching carrier is permitted to verify the consumer's intent to switch carriers by sending a Welcome Package that advises the consumer that, if the consumer does not mail back to the carrier a post card denying the switch, then the consumer's service will be switched. NPRM at ¶16. This essentially operates as a negative option. If the consumer does not send the card back, then the Welcome Package acts to confirm a consumer's intent to switch carriers.

PaOCA submits that this method of supposed verification can often lock in the consumer to switching carriers when this was never the consumer's intent. Such a Welcome Package may often be discarded by the consumer before it is even opened and examined. This is particularly likely if the consumer had an unpleasant phone call from a carrier and has made the decision that the consumer simply wants to have nothing further to do with that carrier.

The existence of the negative option Welcome Package may make it easier to

slam unsuspecting consumers. The other three verification procedures, i.e. a Letter of Agency from the subscriber, a phone call from the subscriber, or verification from a third party, at least should result in some positive sign from the consumer that a service change is desired. However, the failure to return a post card really indicates nothing about the consumer's intent to change carriers. The FCC should remove the negative option from the Welcome Package.

E. The FCC Should Use the Same Verification Procedures to Preferred Carrier Freezes as well as Service Changes.

The FCC has requested comment as to whether it should apply the same verification procedures to PC Freezes as well as PC changes. The PaOCA has recommended to consumers who have had slamming problems that they should use a PC Freeze as a means of avoiding slamming problems. In these circumstances, the PC Freeze is a valuable tool to use by the consumer. However, the OCA also recognize that carriers who already have a customer subscribed may be tempted to slam a consumer with a PC Freeze, just as carriers have often used slamming to transfer the service of consumers.

PaOCA submits that many of the concerns that the FCC has raised concerning the potential misuse of a PC Freeze are valid. NPRM at ¶ 23. While the PaOCA continues to fully support the opportunity for consumers to use a PC Freeze, it is appropriate that such PC Freezes be executed with adequate verification procedures.

F. The FCC Should Find that Consumers Are Not Obligated to Make Payments to Carriers when They Have Been Slammed.

The FCC raises the question as to whether carriers that slam consumers should be entitled to any payments for the services provided when the consumer has not authorized such services. NPRM at ¶ 25. The NAAG has requested that the FCC reverse its earlier

determination that consumers that have been slammed by a carrier should be obligated to pay charges to the slamming carrier. NPRM at ¶ 26.

PaOCA supports NAAG on this point. Whenever a consumer has been slammed by a carrier, that consumer has agreed to pay that carrier nothing for the services that have been inadvertently purchased. Requiring the consumer to pay the slamming carrier for its service would function as a reward for wrongdoing; as NAAG has explained, this is entirely inequitable and will only encourage, rather than deter, slamming. See NPRM at ¶26.

PaOCA also recognizes that Section 258(b) of the Act affects this issue as that portion of the Act now proposes that the slamming carrier is required to forward its revenues received from the slammed consumer to the proper carrier. NPRM at ¶ 27. It is also clear, however, that Congress drafted this Section 258(b) to only apply to those charges collected by the slamming carrier. Section 258(b) falls short of requiring the consumer to make payment to the slamming carrier.

Moreover, while the Act is clear that such payments, if recovered from the consumer, are to be forwarded to the other carrier, the OCA is concerned that once the payment has been made to the slamming carrier it may never be forwarded to the carrier that the consumer has chosen. At times the carriers guilty of slamming abuses have been little more than a post office box and voice mail. It would be quite difficult to make certain that such payments are forwarded at all. In these circumstances, it is equitable and in the best interest of consumers to not require making any such payments in the first instance.

G. The FCC Should Allow States to Enforce and Further Strengthen Slamming Requirements.

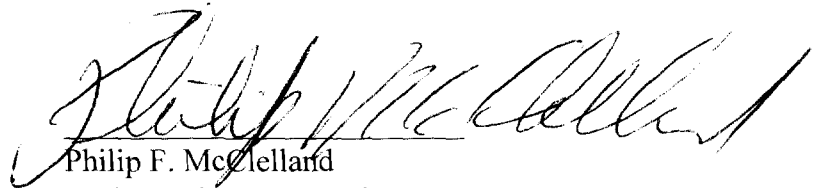
PaOCA notes that the Act has also recognized the role of the states in enforcing slamming penalties. Section 258(a) provides that: “Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services.” The FCC should recognize in its Order that state commissions are also authorized to enforce the slamming procedures that it shall impose in this proceeding. Often the slamming of an interstate toll provider also affects the provision by that same carrier of intrastate service as well. Thus, intrastate services will be often affected by the same slamming violations.

Moreover, the FCC should recognize that the states may further strengthen slamming requirements. Notably, many state legislatures have passed statutes which impose fines upon carriers that slam consumers within a state. Section 258(b) provides that: “The remedies provided by this subsection are in addition to any other remedies available by law.” Thus, the Act appears to have recognized that states may also pass slamming remedies in addition to those put into affect by the FCC. Providing greater penalties for the slamming violation, would not be at all inconsistent with the goals of the FCC. As a result, the PaOCA proposes that this opportunity by states to strengthen slamming requirements should be recognized as well.

V. CONCLUSION

The Commission should consider these Comments as it considers how to revise its current slamming procedures.

Respectfully submitted,



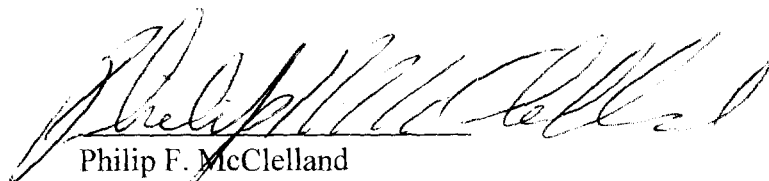
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Dated: September 15, 1997
43788

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document, Comments Of The Pennsylvania Office Of Consumer Advocate, was sent by first class mail, postage prepaid, on this 12th day of September, 1997 to the parties listed below.



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